

EXHIBIT F

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
3 CHARLESTON DIVISION

4

5

6 IN RE: ETHICON, INC. :
7 PELVIC REPAIR SYSTEM, :
8 PRODUCTS LIABILITY LITIGATION : MDL NO. 2327
9 THIS DOCUMENT RELATES TO ALL CASES :
10

11

12 - - -
13 VOLUME I
14 CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
15

16 Thursday, June 20, 2013
17

18

19 - - -
20 Videotaped deposition of RENEE
21 ELAYNE SELMAN, held at DRINKER BIDDLE &
22 REATH, L.L.P., One Logan Square, 18th &
23 Cherry Streets, Philadelphia, Pennsylvania,
24 commencing at approximately 9:11 a.m.,
25 before Rosemary Locklear, a Registered
 Professional Reporter, Certified Realtime
 Reporter, Certified Court Reporter (NJ) and
 Notary Public.

26

27 GOLKOW TECHNOLOGIES, INC.
28 877.370.3377 ph | 971.591.5672 Fax
29 deps@golkow.com

1 A. Don't destroy any documents. I
2 mean, nothing was deleted. I don't recall
3 the exact processes, but we were trained
4 that, you know, hang onto your documents.

5 Q. And what was your understanding
6 as to why that was important?

7 A. In case it was needed in the
8 future for any kind of proceeding.

9 Q. For the court proceedings,
10 potentially?

11 A. Potentially, yes.

12 Q. Okay. So if you look at Exhibit
13 2000, this was a document that was provided
14 to us. It has a Bates number, you'll see,
15 in the right-hand corner.

16 And through -- through the
17 course of the day, Miss Selman, I may refer
18 to those for the record periodically and
19 also to help you navigate through some of
20 the documents by using maybe the last three
21 numbers of the document.

22 This document is
23 ETH.MESH.00875544 and it's titled "J&J Law
24 Department Document Preservation Notice."

25 Do you see that?

1 A. Yes.

2 Q. It states, "Do Not Destroy,
3 Specified Documents"; right?

4 A. Yes.

5 Q. And the date of this is May 22nd,
6 2003, so this document was in place prior to
7 the time that you arrived as president of
8 the company; is that right?

9 A. Yes.

10 Q. And -- and the -- if you see the
11 -- the subject line or the re. clause, it
12 states, "Hold Notice for Kandell versus
13 Ethicon, Inc."

14 I take it that that is a hold
15 notice related to that litigation that is
16 going on.

17 Is that your understanding?

18 A. Yes.

19 Q. Now, it states, "Ethicon, Inc.
20 has been named in a lawsuit arising out of
21 the alleged use of TVT."

22 Do you see that?

23 A. Yes.

24 Q. And then -- strike that.

25 Let me ask you a question: Do

1 you think this litigation hold notice was in
2 place when you arrived at the company in
3 2005 as president?

4 A. I don't -- I don't recall, but
5 based on the date on this.

6 Q. Would there be a process where
7 the company would let you know if the hold
8 notice was cancelled and you could start
9 destroying documents, or how did that work?

10 A. I -- I don't recall notifications
11 of suddenly we're not under a document hold.
12 I think we would err on the side of always
13 keep your documents.

14 Q. This talks about a lawsuit and it
15 talks about TVT.

16 What does TTV stand for?

17 A. Transvaginal tape.

18 Q. Have you ever heard it called
19 tension-free tape or tension-less vaginal
20 tape?

21 MR. SNELL: Objection. Form.

22 THE WITNESS: No.

23 MR. CARTMELL: Okay.

24 BY MR. CARTMELL:

25 Q. We'll talk about that in a little

1 bit.

6 A. I would -- would assume so.

7 Q. Okay. At least based on your
8 understanding, out of an abundance of
9 caution, you would try to keep all documents
10 related to the -- the family of TVT
11 products. Is that fair?

12 A. Yes.

13 Q. If you'll go to Exhibit 2001,
14 you'll see this is another document that was
15 provided to us in this litigation by Johnson
16 & Johnson. The number is ETH.MESH.01949009.
17 Again, it states, "J&J Law Department
18 Document Preservation" Noticed -- "Notice,
19 Do Not Industry. Specified Documents."

20 Do you see that?

21 A. Yes.

22 Q. And this is dated April 27th,
23 2006; correct?

24 A Yes

25 Q. That was after the time that you

1 started as president of Ethicon Women's
2 Health & Urology?

3 A. Correct.

4 Q. Is your belief that this hold --
5 this is a litigation hold notice; correct?

6 A. Correct.

7 Q. And is your belief that this
8 litigation hold notice was in place during
9 the time that you were serving as the
10 president of the company?

11 A. Yes.

12 Q. Do you recall this?

13 A. I don't recall specific
14 litigation hold notices. I know that we had
15 them, I just don't recall each individual
16 one.

17 Q. The subject line or the re.
18 clause here says, Hold notice for Lana
19 Keeton versus Gynecare, et al.; right?

20 A. Yes.

21 Q. And again it talks about Gynecare
22 and Ethicon are parties to a lawsuit
23 involving TVT device.

24 Do you see that?

25 A. Uh-huh.

1 Q. So would your understanding be
2 that all documents related to the TTV family
3 of products would need to be preserved by
4 you, subject to this litigation hold notice?

5 MR. SNELL: Objection. Form.

6 Document speaks for itself.

7 You can answer.

8 THE WITNESS: The -- I would
9 never see a document like this.

10 What would happen is there
11 would be a specific notice from within the
12 company that would lay out exactly what
13 somebody needed to do. So this document per
14 se I don't recall I've ever seen, but there
15 would have been specific instructions about
16 what all employees should do.

17 MR. CARTMELL: Okay.

18 BY MR. CARTMELL:

19 Q. Let me ask you, there's a bolded
20 and underlined section that states, failure
21 to preserve these materials could result in
22 Court-imposed penalties or sanctions on both
23 the company and/or individual employees. Do
24 not discard, destroy or alter in any way any
25 of the documents, electronic or paper,

1 described below and please ensure that these
2 instructions are followed.

3 Do you see that?

4 A. Yes.

5 Q. This sort of document, though,
6 that we're looking at in Exhibit 2001, would
7 that be sent out to all employees of the
8 company?

9 A. I don't recall this specific
10 document, but the understanding to not
11 discard, that would be clear.

12 Q. The second page, if you'd turn to
13 that, there is a section entitled
14 "Instructions For Handling Electronic
15 Materials."

16 Do you see that?

17 A. Yes.

18 Q. And this talks specifically about
19 E-mails and attachments to E-mails and
20 specifically talks about creating an E-mail
21 folder to store or preserve these documents;
22 is that correct?

23 A. Yes.

24 Q. So is -- is -- are these the
25 types of instructions that you were just

1 talking about a minute ago?

2 A. Yes.

3 Q. So just explain how you, as the
4 president of the company, when this
5 litigation hold came out would preserve
6 E-mails and electronic documents.

7 A. I mean, we knew not to delete
8 things. I mean, it was really that simple.

9 Q. Well, and this sounds like you
10 would have to create an E-mail folder on
11 your computer in order to put all that --
12 all the E-mails and electronic documents in
13 there; is that right?

14 A. It looks like it. Or some kind
15 of eRoom or -- I'm not sure.

16 Q. What's an eRoom?

17 A. Just I guess a new folder titled
18 whatever. And I'm not sure where it sat on
19 the server. I guess that's what I'm getting
20 at.

21 Q. During the time that you were
22 president of Ethicon Women's Health &
23 Urology, did you actually create those
24 folders or store those documents for
25 litigation purposes?

1 A. I recall creating some folders or
2 my administrative assistant helped me create
3 folders. I don't remember the exact
4 process.

5 Q. Who was your administrative
6 assistant?

7 A. During part of the time, most of
8 the time it was Sandy Pompilio.

9 Q. And you said part of the time, so
10 when was it that she no longer was your
11 assistant?

12 A. I don't recall the exact time
13 frame. She retired close to the -- she
14 retired before I left, I guess.

15 Q. But close to the time that you
16 left?

17 A. Right.

18 Q. And who became your assistant
19 after Sandy?

20 A. I cannot recall her name.

21 Q. It was a short period of time, I
22 take it?

23 A. Yes. Yes.

24 Q. A matter of months?

25 A. I think so, yes.

1 Q. So you would preserve -- and let
2 me ask you this: Were you very careful to
3 make sure you were preserving all E-mails
4 related to the TVT family of products?

5 A. We -- we generally just didn't
6 delete things. I mean, that was the safest.
7 If in doubt, don't delete.

8 Q. Keep it all.

9 A. Keep it all.

10 Q. Okay. And put it all in the
11 place that was designated for it to be
12 placed by the company; correct?

13 A. Right. In some fashion.

14 Q. If you look at the next exhibit
15 that was provided to us, Exhibit 2002, and
16 this is ETH.MESH.05224752. Tell us what
17 this is.

18 MR. SNELL: Take your time and
19 look at it.

20 MR. PAKETT: I'm sorry. Was
21 that 2002 or 2022?

22 MR. SNELL: 2002.

23 MR. PAKETT: Okay. Thank you.

24 THE WITNESS: Okay.

25 BY MR. CARTMELL:

1 Q. This looks like an E-mail that
2 was sent to actually hundreds of people.

3 Do you see that?

4 A. Right.

5 Q. And it's from compliance
6 information update. That's up at the top.
7 And then the date is October 30th of 2008.

8 Do you see that?

9 A. Right. Yes.

10 Q. And this was actually an E-mail
11 to hundreds of people within the company
12 that was sent by you and others; correct?

13 A. Yes.

14 Q. I take it you were sending this
15 as one of the leaders of -- of the company
16 related to litigation that was pending; is
17 that correct?

18 A. Yes. It was from all of the
19 presidents of Ethicon so it was a general,
20 this is what everyone should do.

21 Q. And tell us what this is, the
22 general communication to these employees.

23 A. That it's a -- a notification of
24 how to handle litigation holds and ways to
25 follow the process in terms of Outlook

1 mailbox and, you know, just specifics on how
2 to do it.

3 Q. If you'd turn to last three, 759
4 in the Bates number, it states, "NEW
5 Procedures for Managing Litigation Holds
6 effective November 6, 2008."

7 Do you see that?

8 A. I see it up there.

9 Q. It's actually on --

10 MR. SNELL: On the previous
11 page.

12 BY MR. CARTMELL:

13 Q. -- Page 759 are the last three
14 numbers of the Bates.

15 A. Oh, okay.

16 Q. It states, the procedures
17 described below are being implemented by the
18 Johnson & Johnson Law Department.

19 Was it the Johnson & Johnson
20 law department that handled the compliance
21 issues and litigation holds?

22 A. I -- I don't recall specifically
23 where the notice -- notices came from.

24 Q. Okay. Well, it looks like here
25 that they -- they're implemented by Johnson

1 & Johnson, the law department at Johnson &
2 Johnson.

3 Do you see that?

4 MR. SNELL: Objection. Form.

5 The document speaks for itself.

6 THE WITNESS: Okay. Yes.

7 BY MR. CARTMELL:

8 Q. And then it says, introducing
9 enhanced procedures for managing litigation
10 holds.

11 Why were the procedures being
12 enhanced? Do you remember?

13 A. I have no idea.

14 Q. If you'd turn to the next page,
15 your signature is at the bottom. It states,
16 Renee Selman, worldwide president.

17 Do you see that?

18 A. Yes.

19 Q. And then at the top, compliance
20 with hold notices is important. All of you
21 are aware that strict compliance with these
22 holds is essential to the ability of the
23 company to defend itself in court in the
24 cases filed against it. There are numerous
25 examples of companies who negligently failed

1 to preserve documents required for
2 litigation and, as a consequence, infuriated
3 the judge presiding over the case, were
4 subject to fines or penalties or, in extreme
5 circumstances, had difficult judgments
6 entered against them.

7 Do you see that?

8 A. Yes.

9 Q. Was that being stated by the
10 company to try to tell employees how
11 important it was to make sure they keep all
12 documents for purposes of litigation?

13 A. Yes.

14 Q. And then it says, we are making
15 compliance with hold notices easier.

16 A couple paragraphs down it
17 says, beginning November -- excuse me.

18 Strike that.

19 A couple paragraphs down it
20 states, beginning November 6th, 2008, you
21 will see a litigation hold folder appear in
22 the Outlook mailbox and a litigation hold
23 folder on your desktop.

24 Tell us what that was.

25 A. It -- it appears they

1 automatically created the litigation hold
2 folder in your Outlook.

3 Q. Okay. You sent this letter.

4 Do you remember that happening?

5 A. Folders being set up
6 automatically?

7 Q. Right.

8 A. Yes.

9 Q. And was it your belief -- strike
10 that.

11 Did you follow the procedures
12 closely for litigation holds?

13 A. Yes.

14 Q. And was your understanding that
15 the company was having difficulty with
16 employees following the practices or the
17 policies set up to follow litigation holds?

18 MR. SNELL: Objection. Form.

19 BY MR. CARTMELL:

20 Q. Or do you remember?

21 A. I wasn't aware of that.

22 Q. The next exhibit, 2003, I
23 believe, this is an E-mail from, at the top,
24 if you start at the top, from Scott Jones
25 dated February 1st of 2011 but I -- I want